

2005 DRAFTING REQUEST

Bill

Received: **10/05/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Justice**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - victims**

Extra Copies:

Submit via email: **YES**

Requester's email: **mark.rinehart@doj.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**
robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Crime victim and witness assistance surcharge in forfeiture cases

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 11/17/2005	jdyer 11/18/2005		_____			S&L
/1	mdsida 12/06/2005	jdyer 12/08/2005	pgreensl 11/18/2005	_____	lemery 11/18/2005		S&L
/2			pgreensl 12/08/2005	_____	lemery 12/08/2005	lnorthro 02/28/2006	

FE Sent For:

<END>

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/2			pgreensl 12/08/2005	_____	lemery 12/08/2005		

for
Assembly
Per
Mark

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/1		1/2 12/8 jld	pgreensl 11/18/2005	12/8	lemery 11/18/2005		

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/?	mdsida						
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pg

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~~pg~~

FE Sent For:

<END>

pg 1/1

Dsida, Michael

From: Rinehart, Mark W.
Sent: Monday, October 03, 2005 4:59 PM
To: Dsida, Michael
Subject: FW: crime victim/witness surcharge

From: Tinker, Steve E.
Sent: Wednesday, September 28, 2005 2:42 PM
To: Zupan, Kathleen J.; Rinehart, Mark W.
Subject: RE: crime victim/witness surcharge

I think the amendment allows us to collect the v/w surcharge on crimes that are amended to forfeitures.

Under this draft, the surcharge would be divided into part A and B. If you want it to all go to A, we will need to add some language.

Mike's ?'s 1. I'm not sure "amend the charge" works, since, as far as I know, a criminal complaint would not be used in a forfeiture proceeding. Wouldn't a new civil complaint need to be filed? I think the current language is ok because we are focusing on cases that are charged as crimes and then amended. A new civil complaint would not need to be filed. The practice in the DA's offices is to move to amend the existing criminal complaint to allege whatever forfeiture is being plead to. The judge accepts the oral amendment and no new complaint is filed.

2. I may end up deleting "Except as provided in sub. (1m), " in sub. (1). It doesn't really make sense, since (1m) does not provide an exception at all to the rule set out in sub. (1). Sub. (1m) just describes another type of case in which the surcharge is imposed. It looks like he already did this.

From: Zupan, Kathleen J.
Sent: Thursday, September 22, 2005 3:50 PM
To: Rinehart, Mark W.; Tinker, Steve E.
Subject: RE: crime victim/witness surcharge

Mark,

Somehow I was expecting that the draft would be more detailed, but maybe this is sufficient (?).

Also, This does not specify that the total surcharge collected will only be applied to Part A. Mark, I thought we were going to attempt that, i.e. to specifically earmark surcharge collected on forfeitures would be solely used toward Part A, but maybe that isn't what was ultimately decided?

From: Rinehart, Mark W.
Sent: Thursday, September 22, 2005 9:00 AM
To: Tinker, Steve E.; Zupan, Kathleen J.
Subject: FW: crime victim/witness surcharge

Here is a response I received from the LRB drafter. Any thoughts?

From: Dsida, Michael
Sent: Wednesday, September 21, 2005 2:08 PM
To: Rinehart, Mark W.
Subject: RE: crime victim/witness surcharge

1. I'm not sure "amend the charge" works, since, as far as I know, a criminal complaint would not be used in a forfeiture proceeding. Wouldn't a new civil complaint need to be filed?

2. I may end up deleting "Except as provided in sub. (1m), " in sub. (1). It doesn't really make sense, since (1m) does not provide an exception at all to the rule set out in sub. (1). Sub. (1m) just describes another type of case in which the surcharge is imposed.

Dsida, Michael

From: Rinehart, Mark W.
Sent: Thursday, September 15, 2005 3:03 PM
To: Dsida, Michael
Subject: crime victim/witness surcharge

Attachments: vw surcharge language.doc



vw surcharge
language.doc (25 ...

Hello Mike. I've attached our rewrite of 973.045 (1m) that I mentioned a couple of weeks ago. In addition, in situations covered by the creation of 973.045 (1m) the draft should direct the entire surcharge go to fund county victim/witness services programs and compensation awards to crime victims, normally Part A of the surcharge.

Thanks.

Repeal 973.045(1m) as created in 2005 Wisconsin Act 25 and create the following:

If a complaint is issued charging a person with a crime, and the prosecutor amends the charge to an offense for which the penalty is a forfeiture, at sentencing the court shall impose a crime victim and witness surcharge in addition to imposing any forfeiture. The amount of the surcharge shall be the amount specified in sub. (1)(a) or (b), depending on the crime that the person was charged with in the complaint.

Can't amend charge to something.

Dsida, Michael

From: Rinehart, Mark W.
Sent: Thursday, November 17, 2005 10:20 AM
To: Dsida, Michael
Subject: FW: Crime victim/witness surcharge bill

Here's the response from our criminal litigation unit director.

From: Tinker, Steve E.
Sent: Thursday, November 17, 2005 10:15 AM
To: Rinehart, Mark W.
Cc: Zupan, Kathleen J.
Subject: RE: Crime victim/witness surcharge bill

On a rare occasion the court will accept the plea and not impose a forfeiture. I think Mike's interpretation is correct but I don't believe it would have much fiscal impact on us.

From: Rinehart, Mark W.
Sent: Wednesday, November 16, 2005 4:52 PM
To: Tinker, Steve E.
Subject: FW: Crime victim/witness surcharge bill

Another question re: crime victim/witness surcharge.

From: Dsida, Michael
Sent: Wednesday, November 16, 2005 4:50 PM
To: Rinehart, Mark W.
Subject: Crime victim/witness surcharge bill

Do courts ever impose no forfeiture whatsoever after finding that a defendant has committed an offense punishable by a forfeiture? (The "in addition to" language could be read as permitting the surcharge to be imposed only if a forfeiture is also imposed.)

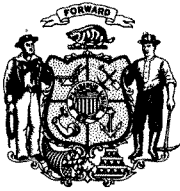
Mike Dsida

Legislative Reference Bureau

608/266-9867

michael.dsida@legis.state.wi.us

11/17/2005



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4101/2

MGD:.....

D - Note

Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Tues

Gen

- 1 AN ACT ...; relating to: crime victim and witness assistance surcharges imposed
- 2 on persons committing civil offenses and making an appropriation. ✓

Analysis by the Legislative Reference Bureau

Under current law, when a court imposes a sentence on a person who has committed a crime or places a person who has committed a crime on probation, the person is required to pay a crime victim and witness assistance surcharge of \$60 for each misdemeanor and \$85 for each felony. Most of the surcharge (part A) is allocated to fund county programs for crime victims and witnesses and to provide awards to crime victims. The rest of the surcharge (part B) is used for grants to fund services for victims of sexual assaults.

Current law also requires that the crime victim and witness assistance surcharge be imposed in certain cases in which a criminal prosecution is deferred or suspended. Specifically, if a person is charged with a crime for conduct that could also be prosecuted as a civil offense and the person agrees to pay a forfeiture as part of an agreement to have the prosecution deferred or suspended, the court must impose in addition to the forfeiture a crime victim and witness assistance surcharge of \$60 (if the person was originally charged with a misdemeanor) or \$85 (if the person was originally charged with a felony). *

This bill revises the criteria for imposing crime victim and witness assistance surcharges in civil offense cases and changes how money collected from those surcharges is used. Under the bill, a court must impose the crime victim and witness assistance surcharge if: 1) a person is charged with one or more crimes in a complaint; 2) as a result of the complaint being amended, the person is charged with a civil

offense in lieu of one of those crimes; and 3) the court finds that the person committed that civil offense. In addition, under the bill, all money collected in such cases from crime victim and witness surcharges is “part A money,” ~~That is, it~~ ^{which} must be used to fund county programs for crime victims and witnesses and to provide awards to crime victims. *

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.455 (5) (g) of the statutes is amended to read:

20.455 (5) (g) *Crime victim and witness assistance surcharge, general services.*

The amounts in the schedule for purposes of ch. 950. All moneys received from part

~~A of any~~ crime victim and witness assistance ~~surcharges~~ surcharge authorized under

s. 973.045 (1) that are allocated as part A of the surcharge under s. 973.045 (3) (1r)

(a) 1., all moneys received from any crime victim and witness assistance surcharge

authorized under s. 973.045 (1m), and all moneys received from any delinquency

victim and witness assistance ~~surcharges~~ surcharge authorized under s. 938.34 (8d)

(a) shall be credited to this appropriation account. The department of justice shall

transfer from this appropriation account to the appropriation account under par. (kj)

the amounts in the schedule under par. (kj).

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33, 139, 309, 326; 2005 a. 25 ss. 356c to 363r, 415m to 415v, 415w, 416g, 416h.

SECTION 2. 20.455 (5) (gc) of the statutes is amended to read:

20.455 (5) (gc) *Crime victim and witness surcharge, sexual assault victim*

services. All moneys received from part ~~B of any~~ crime victim and witness assistance

~~surcharges~~ surcharge authorized under s. 973.045 (1) that are allocated as part B of

1 the surcharge under s. 973.045 (3) (1r) (a) 2., to provide grants for sexual assault
2 victim services under s. 165.93.

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33, 139, 309, 326; 2005 a. 25 ss. 356c to 363r, 415m to 415v, 415w, 416g, 416h.

3 **SECTION 3.** 973.045 (1) (intro.) of the statutes, as affected by 2005 Wisconsin
4 Act 25, is amended to read:

5 973.045 (1) (intro.) ~~Except as provided in sub. (1m),~~ if If a court imposes a
6 sentence or places a person on probation, the court shall impose a crime victim and
7 witness assistance surcharge calculated as follows:

History: 1983 a. 27; 1987 a. 27; 1989 a. 31; 1993 a. 16; 1995 a. 201; 2003 a. 33; 2005 a. 25.

8 **SECTION 4.** 973.045 (1m) of the statutes, as created by 2005 Wisconsin Act 25,
9 is repealed and recreated to read:

10 973.045 (1m) (a) In this subsection, “civil offense” means an offense punishable
11 by a forfeiture.

12 (b) If all of the following apply, the court shall impose a crime victim and witness
13 assistance surcharge in addition to any forfeiture that it imposes:

14 1. The person is charged with one or more crimes in a complaint.

15 2. As a result of the complaint being amended, the person is charged with a civil
16 offense in lieu of one of those crimes.

17 3. The court finds that the person committed that civil offense.

18 (c) The amount of the surcharge imposed under par. (b) shall be the amount
19 specified in sub. (1) (a) or (b), depending on whether the crime that was the subject
20 of the amendment under par. (b) 2. was a misdemeanor or a felony.

21 **SECTION 5.** 973.045 (1r) (b) of the statutes is created to read:

22 973.045 (1r) (b) The entire amount of any surcharge imposed under sub. (1m)
23 shall be allocated to part A.

1 **SECTION 6.** 973.045 (2m) of the statutes is created to read:

2 973.045 **(2m)** The secretary of administration shall credit part A of the crime
3 victim and witness surcharge to the appropriation account under s. 20.455 (5) (g) and
4 part B to the appropriation account under s. 20.455 (5) (gc).

5 **SECTION 7.** 973.045 (3) (a) of the statutes is renumbered 973.045 (1r) (a), and
6 973.045 (1r) (a) (intro.), as renumbered, is amended to read:

7 973.045 **(1r)** (a) (intro.) The clerk shall record the any crime victim and witness
8 surcharge imposed under sub. (1) in 2 parts. ~~Part A is the portion that the secretary~~
9 ~~of administration shall credit to the appropriation account under s. 20.455 (5) (g) and~~
10 ~~part B is the portion that the secretary of administration shall credit to the~~
11 ~~appropriation account under s. 20.455 (5) (gc), as follows:~~

12 History: 1983 a. 27; 1987 a. 27; 1989 a. 31; 1993 a. 16; 1995 a. 201; 2003 a. 33; 2005 a. 25.

(END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4101/2dn

MGD:.....

JLD

Mark:

Since the bill creates a new provision specifying that the total amount of any surcharge imposed for a forfeiture goes to part A, and since the definition of part A in sub. (3) (a) (intro.) applies to that new provision, as well as to surcharges imposed for crimes, it made sense to remove the definitions of parts A and B from sub. (3) (a) (intro.). That change, however, made it even more apparent that the existing provisions of this section are out of order. (The provision in sub. (3) (a) (intro.) requiring the clerk to record the surcharge comes after sub. (2)'s description of the collection, transmission, and retransmission by the county treasurer of the surcharge.) Renumbering what remains in sub. (3) so that it precedes sub. (2) puts the provisions of this section in a more appropriate order.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4101/1dn
MGD:jld:pg

November 18, 2005

Mark:

Since the bill creates a new provision specifying that the total amount of any surcharge imposed for a forfeiture goes to part A, and since the definition of part A in sub. (3) (a) (intro.) applies to that new provision, as well as to surcharges imposed for crimes, it made sense to remove the definitions of parts A and B from sub. (3) (a) (intro.). That change, however, made it even more apparent that the existing provisions of this section are out of order. (The provision in sub. (3) (a) (intro.) requiring the clerk to record the surcharge comes after sub. (2)'s description of the collection, transmission, and retransmission by the county treasurer of the surcharge.) Renumbering what remains in sub. (3) so that it precedes sub. (2) puts the provisions of this section in a more appropriate order.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4101/1

MGD:jld:pg

SOON

2005 BILL

Regen

1 AN ACT *to renumber and amend* 973.045 (3) (a); *to amend* 20.455 (5) (g),
2 20.455 (5) (gc) and 973.045 (1) (intro.); *to repeal and recreate* 973.045 (1m);
3 and *to create* 973.045 (1r) (b) and 973.045 (2m) of the statutes; **relating to:**
4 crime victim and witness assistance surcharges imposed on persons
5 committing civil offenses and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, when a court imposes a sentence on a person who has committed a crime or places a person who has committed a crime on probation, the person is required to pay a crime victim and witness assistance surcharge of \$60 for each misdemeanor and \$85 for each felony. Most of the surcharge (part A) is allocated to fund county programs for crime victims and witnesses and to provide awards to crime victims. The rest of the surcharge (part B) is used for grants to fund services for victims of sexual assaults.

Current law also requires that the crime victim and witness assistance surcharge be imposed in certain cases in which a criminal prosecution is deferred or suspended. Specifically, if a person is charged with a crime for conduct that could also be prosecuted as a civil offense and the person agrees to pay a forfeiture as part of an agreement to have the prosecution deferred or suspended, the court must impose, in addition to the forfeiture, a crime victim and witness assistance surcharge of \$60 (if the person was originally charged with a misdemeanor) or \$85 (if the person was originally charged with a felony).

BILL

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.455 (5) (g) of the statutes is amended to read:

2 20.455 (5) (g) *Crime victim and witness assistance surcharge, general services.*

3 The amounts in the schedule for purposes of ch. 950. All moneys received from part
4 ~~A~~ of any crime victim and witness assistance surcharges surcharge authorized
5 under s. 973.045 (1) that are allocated as part A of the surcharge under s. 973.045
6 (3) (1r) (a) 1., all moneys received from any crime victim and witness assistance
7 surcharge authorized under s. 973.045 (1m), and all moneys received from any
8 delinquency victim and witness assistance surcharges surcharge authorized under
9 s. 938.34 (8d) (a) shall be credited to this appropriation account. The department of
10 justice shall transfer from this appropriation account to the appropriation account
11 under par. (kj) the amounts in the schedule under par. (kj).

12 **SECTION 2.** 20.455 (5) (gc) of the statutes is amended to read:

13 20.455 (5) (gc) *Crime victim and witness surcharge, sexual assault victim*
14 *services.* All moneys received from ~~part B~~ of any crime victim and witness assistance
15 surcharges surcharge authorized under s. 973.045 (1) that are allocated as part B of

BILL

1 the surcharge under s. 973.045 (3) (1r) (a) 2., to provide grants for sexual assault
2 victim services under s. 165.93.

3 **SECTION 3.** 973.045 (1) (intro.) of the statutes, as affected by 2005 Wisconsin
4 Act 25, is amended to read:

5 973.045 (1) (intro.) ~~Except as provided in sub. (1m), if~~ If a court imposes a
6 sentence or places a person on probation, the court shall impose a crime victim and
7 witness assistance surcharge calculated as follows:

8 **SECTION 4.** 973.045 (1m) of the statutes, as created by 2005 Wisconsin Act 25,
9 is repealed and recreated to read:

10 973.045 (1m) (a) In this subsection, “civil offense” means an offense punishable
11 by a forfeiture.

12 (b) If all of the following apply, the court shall impose a crime victim and witness
13 assistance surcharge in addition to any forfeiture that it imposes:

14 1. The person is charged with one or more crimes in a complaint.
15 2. As a result of the complaint being amended, the person is charged with a civil
16 offense in lieu of one of those crimes.

17 3. The court finds that the person committed that civil offense.

*on or after the effective date of this
subdivision. [reviser inserts
date]*

18 (c) The amount of the surcharge imposed under par. (b) shall be the amount
19 specified in sub. (1) (a) or (b), depending on whether the crime that was the subject
20 of the amendment under par. (b) 2. was a misdemeanor or a felony.

21 **SECTION 5.** 973.045 (1r) (b) of the statutes is created to read:

22 973.045 (1r) (b) The entire amount of any surcharge imposed under sub. (1m)
23 shall be allocated to part A.

24 **SECTION 6.** 973.045 (2m) of the statutes is created to read:

BILL

973.045 (2m) The secretary of administration shall credit part A of the crime victim and witness surcharge to the appropriation account under s. 20.455 (5) (g) and part B to the appropriation account under s. 20.455 (5) (gc).

SECTION 7. 973.045 (3) (a) of the statutes is renumbered 973.045 (1r) (a), and 973.045 (1r) (a) (intro.), as renumbered, is amended to read:

973.045 (1r) (a) (intro.) The clerk shall record the any crime victim and witness surcharge imposed under sub. (1) in 2 parts. ~~Part A is the portion that the secretary of administration shall credit to the appropriation account under s. 20.455 (5) (g) and part B is the portion that the secretary of administration shall credit to the appropriation account under s. 20.455 (5) (ge), as follows:~~

(END)